

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MELBA GAUCI

Plaintiff,

v.

CITI MORTGAGE, et al.,

Defendants.

Case No. 2:11-cv-01387-ODW(JEMx)

**ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT [67]**

I. INTRODUCTION

Before the Court is Defendant credit reporting agencies Experian Information Solutions, Inc.; Equifax Information Services, LLC; and Trans Union LLC's (collectively "CRAs") February 16, 2012 Motion for Summary Judgment. (ECF No. 67.) Plaintiff filed an Opposition on March 26, 2012, to which the CRAs filed the Reply on April 2, 2012. (ECF Nos. 87, 89.) The Court has carefully considered the parties' briefs, the evidence submitted in support of and in opposition to those briefs, and the parties' presentations made at oral argument on April 16, 2012, and April 30, 2012. For the following reasons, the Court **GRANTS** the CRAs' Motion.

II. FACTUAL BACKGROUND

In 2008, Plaintiff Melba Gauci obtained a mortgage loan from Callisto Group, Inc. to finance the purchase of property located at 301 South Weymouth Avenue, Los Angeles, California 90732. (Def.'s Statement of Uncontroverted Facts ("UF") 1.)

1 Plaintiff is a real estate broker and purchased this property as an investment. (Gauci
2 Depo. 14:2–22, 16:19–22, 26:10–14.) As part of the purchase, Plaintiff authorized
3 Callisto to create an impound account, from which property taxes and property
4 insurance would be paid. (UF 3.) Callisto estimated Plaintiff’s annual property taxes
5 would be approximately \$3,800.00 per year, and on that basis estimated that
6 Plaintiff’s total monthly mortgage payment would be \$2,211.02.¹ (*Id.*; Opp’n 6.)
7 Once the loan closed, Callisto sold Plaintiff’s loan to CitiMortgage, and CitiMortgage
8 became the successor in interest to Callisto’s duties and obligations. (UF 2.)

9 Plaintiff began making her mortgage payments in November 2008. The same
10 month, the County of Los Angeles charged CitiMortgage for the first property tax
11 payment, which was \$8,957.04 instead of the originally estimated \$3,800.00. (UF 5.)
12 As a result, CitiMortgage raised Plaintiff’s impound account payment from \$398.00 to
13 \$1,285.00 to reflect this increase. (UF 7.) On January 23, 2009, CitiMortgage
14 notified Plaintiff that her mortgage payments would increase from \$2,211.02 to
15 \$3,098.61² on March 1, 2009, to reflect the increased escrow payments. (UF 6–7.)

16 In February 2009, after receiving her March 2009 bill reflecting the increased
17 mortgage payments, Plaintiff called CitiMortgage to dispute the increase in payments.
18 (UF 11–12.) Meanwhile, Plaintiff ignored the change to her bills and continued
19 paying the original, lower monthly payment. (UF 14.) While CitiMortgage maintains
20 that it never told Plaintiff to pay this lower amount (UF 13), Plaintiff contends that she
21 was informed over the phone that she should be paying \$2,211.02 instead of
22 \$3,098.61. (Gauci Depo. 75:19–24.) Regardless, when Plaintiff paid less than the
23 \$3,098.61 payment allegedly due, CitiMortgage would allocate Plaintiff’s lower
24 payment to an “unapplied funds” account; once the unapplied funds accumulated to
25 the sufficient amount, CitiMortgage would post a full payment to Plaintiff’s impound

26
27 ¹ Comprising \$398.00 for the escrow account and \$1,813.02 for principal and interest.
28 ² Comprising the new \$1,285.00 for the escrow account and the original \$1,813.02 for principal and
interest.

1 account. (UF 15.) Proceeding in this fashion, CitiMortgage ultimately deemed
2 Plaintiff a delinquent payer and reported Plaintiff to the CRAs as such. (UF 16;
3 Opp'n 7.)

4 Plaintiff contends that the County incorrectly assessed the property taxes based
5 on an inflated property value. (Pl.'s Statement of Genuine Disputes 9–10, 16–17.)
6 Notwithstanding her dispute regarding the propriety of the property tax increase,
7 Plaintiff admits that CitiMortgage correctly calculated her new escrow and mortgage
8 payments based on the disputed property tax increase. (*Id.*) Plaintiff also admits that
9 she must pay CitiMortgage for the property taxes that CitiMortgage paid to the
10 Country. (UF 21.) At the same time, however, Plaintiff insists that she should have
11 paid the initially estimated amount escrow payments. (Pl.'s Statement of Genuine
12 Disputes 9–10, 16–17.)

13 After CitiMortgage reported to the CRAs that Plaintiff was past due on
14 payments, the CRAs downgraded Plaintiff's credit rating to delinquent, which
15 Plaintiff contends prevented her from obtaining other loans to purchase other
16 properties or refinance her existing loans. (Opp'n 7.) While Plaintiff repeatedly
17 communicated with the CRAs to contest CitiMortgage's report in an effort to clear her
18 records, her credit rating status remained the same, even after the CRAs conducted
19 reinvestigations. (UF 30–39.) According to Plaintiff, while she reported her dispute
20 with CitiMortgage to the CRAs, the CRAs' investigations were "cursory and not
21 responsive to [Plaintiff's] concerns." (Opp'n 7.)

22 As a result, Plaintiff brought this lawsuit against CitiMortgage and the CRAs in
23 Los Angeles County Superior Court on December 16, 2010. On February 15, 2011,
24 Defendants removed the action to this Court. (ECF No. 1.) Plaintiff alleges that the
25 CRAs violated the Fair Credit Reporting Act ("FCRA") by failing to properly
26 investigate her credit history before lowering her rating and by failing to alter her
27 rating after Plaintiff provided them with additional information. (SAC ¶¶ 26–27.)
28

1 The CRAs now move for summary judgment on Plaintiff's FCRA claims. (ECF
2 No. 67.)

3 **III. LEGAL STANDARD**

4 Summary judgment is appropriate when, after adequate discovery, the
5 evidence—viewed in the light most favorable to the nonmoving party—demonstrates
6 that there is no genuine issue as to any material fact and the moving party is entitled to
7 judgment as a matter of law. Fed. R. Civ. P. 56(c). A disputed fact is “material”
8 where the resolution of that fact might affect the outcome of the suit under the
9 governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1968). An issue
10 is “genuine” if the evidence is sufficient for a reasonable jury to return a verdict for
11 the nonmoving party. *Id.* Evidence the Court may consider includes the pleadings,
12 discovery and disclosure materials, and any affidavits on file. Fed. R. Civ.
13 P. 56(c)(2). Where the moving party’s version of events differs from the nonmoving
14 party’s version, “courts are required to view the facts and draw reasonable inferences
15 in the light most favorable to the party opposing the summary judgment motion.”
16 *Scott v. Harris*, 550 U.S. 372, 378 (2007) (internal quotation marks omitted).

17 The moving party bears the initial burden of establishing the absence of a
18 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).
19 The moving party may satisfy that burden by “showing—that is, pointing out to the
20 district court—that there is an absence of evidence to support the nonmoving party’s
21 case.” *Id.* at 325.

22 Once the moving party has met its burden, the nonmoving party “must do more
23 than simply show that there is some metaphysical doubt as to the material facts.”
24 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather,
25 the nonmoving party must go beyond the pleadings and identify specific facts that
26 show a genuine issue for trial. *Id.* at 587; *Celotex*, 477 U.S. at 323–34; *Liberty Lobby*,
27 477 U.S. at 248. Only genuine disputes over facts that might affect the outcome of the
28 suit will properly preclude the entry of summary judgment. *Anderson*, 477 U.S. at

1 248; *see also Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 919 (9th Cir.
2 2001) (finding that the non-moving party must present specific evidence from which a
3 reasonable jury could return a verdict in its favor). A genuine issue of material fact
4 must be more than a scintilla of evidence, or evidence that is merely colorable or not
5 significantly probative. *Addisu v. Fred Meyer*, 198 F.3d 1130, 1134 (9th Cir. 2000).

6 Further, it is not the task of the district court “to scour the record in search of a
7 genuine issue of triable fact. [Courts] rely on the nonmoving party to identify with
8 reasonable particularity the evidence that precludes summary judgment.” *Keenan v.*
9 *Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996) (quoting *Richards v. Combined Ins. Co.*, 55
10 F.3d 247, 251 (7th Cir. 1995)); *see also Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d
11 1026, 1031 (9th Cir. 2001) (“The district court need not examine the entire file for
12 evidence establishing a genuine issue of fact, where the evidence is not set forth in the
13 opposing papers with adequate references so that it could conveniently be found.”).

14 Finally, the evidence presented by the parties must be admissible. Fed. R. Civ.
15 P. 56(e). Conclusory or speculative testimony in affidavits and moving papers is
16 insufficient to raise genuine issues of fact and defeat summary judgment. *Thornhill's*
17 *Publ'g Co. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979). Conversely, a genuine
18 dispute over a material fact exists if there is sufficient evidence supporting the claimed
19 factual dispute, requiring a judge or jury to resolve the differing versions of the truth.
20 *Anderson*, 477 U.S. at 253.

21 IV. DISCUSSION

22 Plaintiff’s sole claim against the CRAs alleges willful violations of the FCRA.
23 Plaintiff contends that the CRAs failed to follow reasonable procedures to assure
24 maximum possible accuracy of Plaintiff’s credit report in violation of 15 U.S.C.
25 § 1681e(b) and failed to conduct a reasonable investigation of Plaintiff’s disputes in
26 violation of 15 U.S.C. § 1681i(a). (SAC ¶¶ 86–124.)

27 The CRAs move for summary judgment on grounds that (1) Plaintiff’s credit
28 report was accurate; (2) Plaintiff’s dispute over the CitiMortgage reporting is an

1 impermissible collateral attack on her dispute with CitiMortgage; and (3) pursuant to
2 the FCRA, the CRAs conducted reasonable reinvestigations and maintained
3 reasonable procedures to assure maximum possible accuracy of Plaintiff's credit
4 report. Plaintiff argues that material issues of triable fact exist as to each of the above
5 grounds sufficient to deny the CRAs' Motion.

6 The outcome of this Motion turns on the threshold issue whether Plaintiff's
7 credit reports were accurate within the meaning of FCRA. The remaining issues—
8 whether the CRAs' reporting and reinvestigation procedures were reasonable—are
9 typically jury questions inappropriate for resolution on a motion for summary
10 judgment. Accordingly, the Court considers only whether Plaintiff's credit reports
11 were accurate under the FCRA.

12 **A. LEGAL STANDARD FOR FCRA CLAIMS**

13 The purpose of the FCRA is to protect consumers from circulation by consumer
14 credit reporting agencies of inaccurate information about consumers to lending
15 institutions. 15 U.S.C. § 1681. As a consumer bringing actions under FCRA,
16 Plaintiff in this case asserts two claims. First, Plaintiff alleges that the CRAs violated
17 § 1681e(b) by failing to follow reasonable procedures to assure maximum possible
18 accuracy of the consumer's credit report. Second, Plaintiff alleges that the CRAs
19 violated § 1681i(a) by failing to conduct reasonable reinvestigation of information
20 disputed by the consumer.

21 To establish a prima facie violation under § 1681e(b), a plaintiff must first
22 present evidence demonstrating that a credit reporting agency prepared a report
23 containing inaccurate information. *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d
24 1329, 1333 (9th Cir. 1995) (citing *Cahlin v. General Motors Acceptance Corp.*, 936
25 F.2d 1151, 1156 (11th Cir. 1991)). If the plaintiff establishes an inaccuracy, a credit
26 reporting agency can nonetheless escape liability by establishing that it followed
27 reasonable procedures. *Id.* The reasonableness of the procedures and whether the
28 credit reporting agency followed those procedures will be jury questions in the

1 overwhelming majority of cases. *Id.* If the plaintiff fails to satisfy the initial burden
2 of showing inaccuracy, the plaintiff has not established a violation of § 1681e(b) as a
3 matter of law, and a court need not inquire further as to the reasonableness of the
4 procedures adopted by the credit reporting agency. *Cahlin*, 936 F.2d at 1156.

5 To proceed on a claim under § 1681i(a), a plaintiff must show that her credit
6 report contained an actual inaccuracy. *Carvalho v. Equifax Info. Servs., LLC*, 629
7 F.3d 876, 890 (9th Cir. 2010). When the plaintiff fails to establish an actual
8 inaccuracy, courts may properly grant summary judgment in favor of credit reporting
9 agency defendants. *See id.* at 892.

10 Accurate reporting by a credit reporting agency is thus a complete defense to
11 claims under both § 1681e(b) and § 1681i(a). If a plaintiff fails to show that the
12 plaintiff's credit report was inaccurate, summary judgment should be granted to the
13 credit reporting agency defendant. However, if a plaintiff does overcome that initial
14 threshold, the next questions with respect to the reasonableness of a credit reporting
15 agency's reporting and reinvestigation procedures are for a jury to decide, and
16 summary judgment should be denied.

17 **B. WHETHER PLAINTIFF'S CREDIT REPORTS WERE INACCURATE UNDER THE
18 FCRA**

19 The Court turns now to the threshold issue whether Plaintiff has established that
20 the CRAs' credit reports were inaccurate within the meaning of the FCRA.

21 *1. Legal standard under the FCRA*

22 In the Ninth Circuit, credit reports are considered accurate under the FCRA
23 where the credit reporting agencies correctly report information furnished by the
24 creditor, even when there is a pending legal dispute between plaintiff and creditor as
25 to the validity of the debt. In *Carvalho*, the Ninth Circuit explained the standard for
26 considering whether a consumer's credit report was inaccurate within the meaning of
27 the FCRA. There, the plaintiff filed FCRA claims against the credit reporting
28 agencies. In deciding the threshold question whether the consumer plaintiff's credit

1 report was accurate, the Ninth Circuit adopted a “patently incorrect or materially
2 misleading” standard. *Carvalho*, 629 F.3d at 890.

3 The *Carvalho* court found no *patent* error in the plaintiff’s credit report because
4 all of the relevant facts—including the ownership of the debt, the amount past due,
5 and the listed dates—were correctly reported. *Id.* However, the plaintiff claimed the
6 inaccuracy was *latent*, arguing that even if technically accurate, the credit report was
7 misleading because she was not legally obligated to pay the debt. *Id.* The plaintiff
8 contended that credit reporting agencies unfairly maligned the creditworthiness of
9 innocent consumers by reporting disputed debts without undertaking a searching
10 inquiry into the plaintiff’s legal defenses to payment. *Id.*

11 The Ninth Circuit squarely denied this argument and unmistakably stated that
12 credit reporting agencies are neither qualified nor obligated to resolve such an issue.
13 *Id.* at 891–92. “Because CRAs are ill equipped to adjudicate contract disputes, courts
14 have been loath to allow consumers to mount collateral attacks on the legal validity of
15 their debts in the guise of FCRA reinvestigation claims.” *Id.* at 891. Simply put, the
16 credit reports are considered accurate when the credit reporting agencies correctly
17 report information furnished by the creditor. *See id.* Indeed, that a consumer has
18 defaulted “is certainly relevant to potential creditors and is precisely the type of
19 information that a credit report is meant to supply,” regardless how legally sound the
20 consumer’s reasons for default are. *Id.* at 891.

21 2. *Plaintiff’s credit reports were accurate within the meaning of FCRA*

22 Plaintiff argues that “CMI had no right to have deemed Plaintiff a delinquent
23 payer when CMI made the mistake of charging Plaintiff an incorrect amount of taxes.”
24 (Opp’n 11.) In addition, because there is a pending dispute between CitiMortgage and
25 Plaintiff as to the correct amount of Plaintiff’s debt, and because Plaintiff reported this
26 dispute to the CRAs, the CRAs should have reinvestigated and restored her credit
27 ratings. (*Id.*) Thus Plaintiff concludes that the CRAs violated the FCRA by failing to
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1 reasonably ensure the maximum possible accuracy of Plaintiff's credit reports, and by
2 failing to conduct reasonable reinvestigation after Plaintiff reported the dispute. (*Id.*)

3 Plaintiff essentially contends that, after she informed the CRAs the ongoing
4 dispute between her and CitiMortgage, the CRAs should have adjudicated that dispute
5 before reporting her credit rating as delinquent. But *Carvalho* has squarely rejected
6 this argument. *Carvalho* has clearly settled that, under the FCRA, a credit reporting
7 agency's job is to correctly report information furnished by the creditor, and credit
8 reporting agencies are not supposed to adjudicate a consumer-creditor dispute in order
9 to issue credit reports. *See Carvalho*, 629 F.3d at 891–92. When a credit reporting
10 agency correctly reports the information furnished by the creditor, the credit report is
11 considered as “accurate” within the meaning of the FCRA, even when there is an
12 ongoing dispute as to the validity of the debt. *Id.* Under that circumstance, the
13 consumer is obligated to pay the full amount on time; if she fails to do that and the
14 creditor furnishes the information to the credit reporting agency, all the credit
15 reporting agency needs to do is to correctly report the furnished information. *Id.* That
16 is exactly what happened in this case: even though Plaintiff disputed the payments she
17 owed to CitiMortgage, the CRAs did correctly report the information furnished by
18 CitiMortgage. Therefore, CRAs' credit reports are accurate within the meaning of
19 FCRA.

20 3. *The FCRA affords Plaintiff no remedy in this case*

21 *Carvalho* advises that a consumer who disputes the legal validity of a debt
22 should do so directly at the furnisher level. *Carvalho*, 629 F.3d at 891. Plaintiff's
23 proper recourse here is to resolve her dispute directly with CitiMortgage; only had a
24 court ruled Plaintiff's debt to CitiMortgage invalid and the CRAs had continued to
25 report it as a valid debt would Plaintiff have had grounds for a FCRA claim against
26 the CRAs. *Id.* at 891–92. However, because CRAs' credit reports are considered
27 accurate under the FCRA, and because Plaintiff has not resolved the dispute with
28

1 CitiMortgage, the FCRA does not afford Plaintiff a remedy to restore her credit
2 ratings.

In sum, the material facts in this case reveal that the CRAs correctly reported information CitiMortgage furnished to them. Although Plaintiff disputes the amount of the debt on which CitiMortgage alleges Plaintiff defaulted, that dispute does not render the information the CRAs reported “inaccurate” under the FCRA. Further, the CRAs were not charged with resolving Plaintiff’s dispute with CitiMortgage. The Court therefore **GRANTS** the CRAs’ Motion for Summary Judgment. It is therefore not necessary to reach the question whether the CRAs’ reporting and reinvestigation procedures were reasonable.

V. CONCLUSION

12 For the reasons discussed above, the CRAs' Motion for Summary Judgment is
13 **GRANTED.**

15 || IT IS SO ORDERED.

17 April 30, 2012

**HON. OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE**